IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6143 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SURESH RANCHHODBHAI FALDU

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SP DAVE AGP for Respondents

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/12/97

ORAL JUDGEMENT

1. By this application under Article 226 of the Constitution of India, the petitioner calls in question the legality and validity of the order of detention dated 24.6.1997 passed by the Police Commissioner of Rajkot, invoking his powers under sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred as the "Act") so as to deter the petitioner from carrying out his anti social activities,

the challenge to the public order.

2. With the Gondal Taluka Police Station a complaint for the offence under sec. 406 and 114 of IPC came to be lodged, another complaint with Malaviyanagar Police Station for the offence under section 365, 394, 341, 506(2) and 120 of IPC was also filed, and the third complaint for the offence under section 394, 365 of IPC and sec. 34 of Bombay Police Act was filed with the B-Division Police Station Rajkot. The petitioner was arrested during the course of investigations after the above complaints came to be lodged. During the course of the investigation, the police also collected the alarming facts. It could be noticed that the petitioner was extorting money high handedly from the people by coercieve measures, and threatening the people with death and injury the people were made to yeild to his whims and desire. For extorting money he robbed the people, or forced some of the persons to sign the blank cheques so that he could withdraw required amounts so as to satisfy his needs. He used to demand the vehicles for his use and also forced many to get his vehicle-tank filled with feul. Those who refused to bend his way, they were either beaten bruetly or tortured. Those who gave statements against him or lodged the complaint had to invite death-warrant. The petitioner was thus found to be the head-strong person or a despotic. Eveyone was therefore under a constant fear of violance. The police then thought that bullying and hectoring on the part of the petitioner, were requires to be checked and curbed immediately coming down heavily upon him. After a careful study, it could be seen that under the oridary laws, if actions were taken, it would be nothing but futile exercise and the only way out was to pass the order of detention and detain him. After considerable efforts, the police recorded the statements of the persons and that to on the assurance that the facts disclosing their identity would never be uncovered. Studying those statments also, the opinion that was formed against the petitioner grew stronger. Consequenlty, the Police Commissioner at Rajkot passed the order of detention on 24.6.1997 invoking his powers under sec. 3(2) of the Act. Pursuant to that order, the petitioner is at present under detention. He has challenged the legality and validity of that order preferring this petition.

3. Assailing the order the learned advocate representing the petitioner has submtted that the respondent ought to have furnished the necessary particulars of those witnesses who had given statements

against the petitioner. No doubt, under sec. 9(2) of the Act, the authority was vested with the previlege to withhold certain facts in the public interest, but before the previlege is exercised, the authority ought to have applying the mind satisfied himself about the exercise of the privilege which was not done, and therefore, the order of detention is not tenable at law. On other grounds also the order is assailed, but when the petition can well be disposed of dealing with the ground of exercise of previledge, it is not necessary to dwell upon those other grounds on which submissions are made, to which the learned advocates representing the parties agreed.

4. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22 (5) of the Constitution of India, what becomes clear is that the grounds on which order of detention has been made are required to be communicated to the detenu and further an opportunity of making the representation against the order of detention is required to be given. The detenu is therefore required to be informed not merely factual inference and factual material which led to inference namely not to disclose the certain facts but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act the detaining authority is empowered to withhold such facts and particulars the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has be exercised sparingly and in those cases where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons the authority making the order has to make necessary inquiry personally. What can be deduced from such constitutional

as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. The authority may entrust the task of inquiry to any other person or member of staff or his subordinate, but in that case also he has to apply his mind and decide whether privilege is required to be exercised by withholding certain facts in public interest. If he mechanically endorses or accepts the recommendation of an outside or inferior authority in that behalf the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the Court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power the other side may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel v. State of Gujarat & Others - 35 (1) [1994(1)] G.L.R. 761, may be made.

5. In view of such law made clear, the order is not passed. Reading the order at Annexure-B, it is crystal clear that the Police Commissioner did not applying the mind personally verified the facts and felt satisfied about the exercise of the privilege vested in him under sec. 9(2) of the Act. He entrusted the work for being satisfied to his subordinate, and it seems that mechanically he relied upon the report made by his subbordinate which is not in consonance with the law as stated hereinabove. When that is the case, the order passed is arbitrary and so the continued detention is illegal. The impugned order is required to be quashed.

6. For the aforesaid reasons, the petition is allowed and the order detaining the petitioner is hereby quashed being unconstitutional and invalid. The petitioner is ordered to be released forthwith if no longer required in any other case. Rule made absolute.

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